

Notice of Allowability

Application No.

10/055,492

Examiner

Judy M. Reddick

Applicant(s)

GEBHARD ET AL.

Art Unit

1713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to App'l's Amnd't + 132 Declaration + N/AP (08/17/04) + Telephonic Interview(09/13/04).
2. ☒ The allowed claim(s) is/are 1-3 and 11.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Carl P. Hemenway on 09/13/04.

The application has been amended as follows:

IN THE CLAIMS

In claim 1 (a) @ line 13, "agents" has been deleted and "agent" has been inserted in its stead so as to avoid any ambiguities and preserve claim language clarity.

In claim 1 (b) @ lines 14 & 15, "by weight based on said emulsion polymer weight, nonionic surfactants" has been deleted and "by dry weight based on the dry weight of said emulsion polymer, nonionic surfactant" has been inserted in its stead so as to engender claim language clarity and consistency.

In claim 11 @ line 2, "surfactants" has been deleted and "surfactant" has been inserted in its stead so as to engender claim language clarity.

Claims 4, 5 & 12 have been cancelled.

Claims 6-10 have been cancelled as per having been drawn to an invention non-elected without traverse.

2. The following is an examiner's statement of reasons for allowance: After further consideration coupled with Counsel's persuasive arguments + the Koziski Declaration under 37 CFR § 1.132(08/17/04) the rejection based on Rokowski et al (U.S. 5,534,310), as it applies to claims 1-3 and 11, is herein withdrawn. The instantly claimed

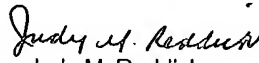
invention is deemed allowable over the prior art of record, Rokowski et al, meritorious of the closest prior art, as per said art neither anticipating nor rendering obvious the precisely defined aqueous coating composition having improved adhesion to friable surfaces comprising: (a) an emulsion polymer having a glass transition temperature of -20 degrees C to 100 degrees C and an average particle diameter less than 120 nanometers, said emulsion polymer consisting essentially of (i) at least one copolymerized ethylenically unsaturated nonionic monomer, each of said nonionic monomer(s) having a water solubility less than 8% by weight based on the weight of water; and (ii) at least one copolymerized acid monomer, such that the acid number of said emulsion polymer is 30 to 100; wherein said emulsion polymer is made without the use of chain transfer agent; and (b) 0.25-10%, by weight based on said emulsion polymer, nonionic surfactant selected from the group consisting of water-soluble alkyl phenol ethoxylates, alkyl alcohol ethoxylates, and mixtures thereof. One having ordinary skill in the art would not have been endowed with any motivation to extrapolate, from the disclosure of any of the prior art of record, including Rokowski et al, the precisely defined aqueous coating composition having improved adhesion to friable surfaces, as claimed, with any reasonable expectation of success. Specifically, the closest embodiment of Rokowski et al, Example 6, teaches a conventional latex polymer prepared by the emulsion polymerization of methyl methacrylate, acetoacetoxyethyl methacrylate, acrylic acid and a chain transfer agent wherein the latex has an acid number of 19 and the use thereof in forming a coating containing Triton X-405 (alkyl aryl polyether alcohol). One having ordinary skill in the art would not have been endowed with any motivation to omit the chain transfer agent coupled with modifying the acid number of said latex polymer with any reasonable expectation of success. Moreover, too much picking and choosing would be involved and highly unwarranted.


3. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Judy M. Reddick whose telephone number is (571)272-1110. The examiner can normally be reached on Monday-Friday, 6:30 a.m.-3:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571)272-1114. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Judy M. Reddick
Primary Examiner
Art Unit 1713

JMR 
09/13/04